their efforts with the Office of Contracts on a case by case basis.

In regard to the comments from the NBA, the RTC has the following responses. In regard to the tracking of fees and awards, the RTC believes that its current tracking is sufficient. In regard to the reporting of tracking results to Washington and to the public, the RTC believes that the comment is merited, and is amending the regulation accordingly. In regard to the reporting relationship of MWOLF personnel in the field to Washington, the RTC believes that the comment is merited, and is amending the regulation accordingly. Regarding enforcement procedures, the rule is being amended to state clearly that suspension and debarment from the entire RTC contracting program as well as from MWOB or MWOLF bonus considerations will be a potential consequence of false or fraudulent certifications. There is no need, however, to put detailed procedures in this regulation because the RTC's existing suspension and exclusion regulation, 12 CFR part 1618, provides sufficient procedures to handle these cases. Finally, the RTC disagrees that the Small Business Act directly applies to the RTC. However, the RTC is committed through this final rule and through its program and procedures (as mandated by the RTC Completion Act of 1993) to increase the percentage of contracts and subcontracts awarded to minority and women owned firms.

D. Technical Changes to the 1992 Rule

In light of its experience in administering the program under the 1992 Rule, the RTC is making certain technical changes to the 1995 Rule. Sections 1617.20 and 1617.30 govern the requirements that MWOB joint ventures and subcontracting arrangements receive technical and cost bonuses. Under the 1992 Rule, joint ventures receive compensation proportional to the work performed, whereas in subcontracting arrangements, the subcontractors receive "commensurate fees." The requirements set forth in this Rule are the same for joint ventures and subcontractors. That the MWOB joint venturer or subcontractor must perform work that is significant and to be compensated in relation to the work performed. The modified language reflects this requirement. Section 1617.21(a) is being amended to clarify that the MWOB joint venture participant(s) need not have the same degree of ownership and control over the joint venture that a minority or woman would need in order for the

company to be certified as a "stand alone" MWOB. Rather, the joint venture MWOB partner's percentage of ownership in the joint venture must directly equate to the joint venture MWOB partner's management and contract responsibilities.

E. Administrative Procedure Act

The RTC is adopting this final rule in order to implement the provisions of section 1216 of FIRREA, section 401 of RRIA and section 21A(w) of the FHLBA as added by section 3(a) of the RTCCA. The rule will be effective immediately upon publication in the **Federal Register**.

Several of the provisions of the final rule have been adopted without the prior notice and comment generally required by the Administrative Procedure Act (APA), 5 U.S.C. 533. The requirement of prior notice and comment may be waived for "good cause". The RTC hereby finds that there is good cause for such a waiver.

First, as discussed at length above, in the RTCCA, Congress mandated several reforms to improve and maximize the participation of MWOBs and MWOLFs in RTC's contracting activities. In one case (required subcontracting by MWOBs/MWOLFs), Congress made such participation a prerequisite to the RTC's ability to enter into or modify contracts after December 17, 1993 where compensation would equal or exceed \$500,000. The RTC believes that in imposing these requirements, Congress was mindful of the limited duration of the RTC (which in fact was further limited by the RTCCA), and that Congress intended that the RTC implement these mandates as soon as possible in order that the maximum benefits of the mandates would be achieved.

Where the RTC has acted without prior Federal Register notice and comment in implementing the RTCCA, it has not done so without providing actual notice to contractors or considering feedback from such contractors. All such changes have been incorporated into the RTC's Contract Policies and Procedures Manual, which is widely available to RTC contractors. RTC contractors and offerors are regularly in communication with RTC contracting officers. If there had been major problems in the implementation of the Completion Act mandates, there is no doubt that the RTC would have been made aware of them and adjusted for them.

On balance, the RTC finds that any harm to the public from implementing the Completion Act reforms without prior rulemaking notice and comment is outweighed by the benefit to the public, and therefore, good cause as required by the APA exists.

F. Final Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, comments were specifically sought on an initial regulatory flexibility analysis. No comments were specifically filed in response. The following analysis is provided.

- 1. Reasons, Objectives, and Legal Basis Underlying the 1995 Rule. These elements have been discussed elsewhere in the Supplementary Information. By publishing this 1995 Rule, the RTC intends to ensure the maximum participation levels possible of MWOBs and MWOLFs in RTC contracting activities and awards.
- 2. Comments on Initial Regulatory Flexibility Analysis; Assessment of Issues Raised. In the Preamble to the 1992 Rule, the RTC provided an initial regulatory flexibility analysis and specifically sought comments on alternative methods of compliance, or reporting requirements. No such comments were filed.
- 3. Alternatives to the 1995 Rule. The RTC has not identified alternatives that would be less burdensome to small businesses and yet effectively accomplish the objectives of the 1995 Rule. The RTC has made every attempt to bear the administrative burdens rather than shifting them to prospective contractors.

List of Subjects in 12 CFR Part 1617

Government contracts, Lawyers, Legal services, Minority businesses and Women.

For the reasons set out in the preamble, the RTC hereby revises part 1617, title 12, chapter XVI, of the Code of Federal Regulations to read as follows:

PART 1617—MINORITY AND WOMEN OWNED BUSINESS AND LAW FIRM PROGRAM

Subpart A—General Provisions

Sec.

1617.1 Purpose.

1617.2 Policy.

1617.3 Scope.

1617.4 RTC organizational responsibilities and staffing.

1617.5 Definitions.

Subpart B—General Provisions Applicable to Businesses

1617.10 Contracting objectives.

1617.11 Program components.

1617.12 Program promotion.

1617.13 Certification.

1617.14 Participation of MWOB contractors in task order agreements.